

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2012-107176-001 DT  
CR2012-007950-001 DT

10/09/2012

HONORABLE WARREN J. GRANVILLE

CLERK OF THE COURT  
B. McDonald  
Deputy

STATE OF ARIZONA

SUZANNE E COHEN  
COLLEEN CLASE

v.

MICHAEL LEE CRANE (001)

HERMAN ALCANTAR JR.  
JAMIE SPARKS

CAPITAL CASE MANAGER

RULING

This Court took under advisement Defendant's motion for self-representation. This Court has reviewed the Rule 11 reports filed under seal in CR2009-112516-001, CR2010-005511-001, and CR2012-107176-001, Defendant's court appearances in CR2009-112516-001, CR2010-005511-001, and CR2012-107176-001, the *Faretta* colloquy with Defendant on October 8, 2012, and the applicable case law. This Court makes the following findings and rulings:

The United States Supreme Court has held that a defendant who is competent to be tried is competent to represent himself. *Faretta v. California*, 422 U.S. 806, 834, 95 S.Ct. 2525, 2541 (1975). That standard requires that the court find that Defendant understands these proceedings and could assist in his defense. The Supreme Court later modified its holding to require that the defendant also be competent to present a defense. *Edwards v. Indiana*, 554 U.S. 164, 128 S.Ct. 2379 (2008). While it may be foolhardy to represent yourself, the trial court must respect a defendant's request for self-representation, even if it would be to his detriment. *U.S. v Johnson*, 610 F.3d, 1138, 1140 (9<sup>th</sup> Cir. 2010).

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Based upon Defendant's most recent Rule 11 reports, this Court's conversations with Defendant, and this Court's observations of Defendant in his court appearances before this Court as well as the FTR recordings of his sessions before other judicial officers, this Court finds that Defendant meets both the *Faretta* and *Edwards* tests. In all of his appearances before this Court, Defendant has been responsive to the Court's queries, asking for clarification when needed, and reflecting an understanding of the issues discussed. Defendant made clear his disagreement with the Court at several points, but always in a mannered tone.

The fact that Defendant is competent to represent himself does not end the inquiry.

A defendant's right to self-representation is not limitless. Even if a defendant has been found competent to waive counsel, the court still has discretion to deny the request for self-representation if the defendant "deliberately engages in serious and obstructionist misconduct" or does not "comply with the relevant rules of procedural and substantive law." *Faretta*, 422 U.S. at 834 n.46; *Johnson*, 610 F.3d at 1144; *State v. DiNister*, 140 Ariz. 407 (1985); *State v. Martin*, 102 Ariz. 142, 146 (1967). *See also*, *State v. Henry*, 189 Ariz. 542, 550 (1997) ("Motions for self-representation must be balanced against the government's right to a fair trial conducted in a judicious, orderly fashion."); *State v. Cornell*, 179 Ariz. 314, 332 (1994) ("A trial court has broad discretion in managing the conduct of a trial, and has a duty to properly exercise that discretion.").

Thus, a defendant who is disruptive of the proceedings may lose his right to self-representation. *U.S. v. Williams*, 428 F.3d 723, 725 (9th Cir. 2011); *State v. Brooks*, 161 Ariz. 177, 180-81 (Ct. App. 1989); *Smith v. State*, 953 P.2d 264, 268 (Nev. 1998); *Wilson v. State*, 196 S.W.3d 511, 516 (Ark. App. 2004); *Coleman v. State*, 617 P.2d 243, 245 (Okla. Ct. Crim. App. 1980). Repeatedly arguing issues already ruled on also may justify forfeiture of the right of self-representation. *State v. Hemenway*, 95 P.3d 408, 411-12 (Wash. App. 2004).

During the *Faretta* colloquy, Defendant advised the Court that he would continue to challenge this Court's jurisdiction and continue to insist that his case be managed under the Uniform Commercial Code. Defendant politely maintained his position even after this Court ruled that his positions were overruled and that his remedy was to seek review by a higher court and not persist in those same claims before this Court.

Defendant also challenged this Court's ruling to apply the Arizona Criminal Code, the Arizona Rules of Criminal Procedure, the Rules of Evidence, and the provisions of the Arizona Constitution and United States Constitution related to criminal proceedings. He again politely but consistently and firmly declined to acknowledge that the governing authority for his case included provisions of the United States Constitution and the Arizona Constitution applicable to

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criminal proceedings, the Arizona Criminal Code, the Arizona Rules of Criminal Procedure and Rules of Evidence. At another point in our colloquy, Defendant asserted that his First Amendment right of free speech superseded this Court's authority to control the proceedings.

Defendant's belief about the lack of the court's jurisdiction and the supremacy of the Uniform Commercial Code were not expressed in either of his earlier cases in CR2009-112516-001 or CR2010-005511-001. He did, however, express these beliefs in his current case on June 27, 2012, July 16, 2012, July 18, 2012, August 23, 2012 and September 12, 2012. He acted on those beliefs on February 21, 2012, when he refused transport, again on March 22, 2012, when he refused to answer the court's questions, and again on September 12, 2012, when the court directed that he be escorted out of the courtroom.

This Court finds that the Defendant's persistent refusal to acknowledge the governing authority for his case and the trial court's Rule 611 authority to exercise reasonable control over the proceedings would jeopardize the exercise of his rights, would hinder the pursuit of justice, and would disrupt and delay the orderly progress of the case. This Court finds that Defendant's refusal to accept this Court's rulings and authority to preside, however politely stated, would disrupt and delay the orderly progress of his case.

Finally, even if a defendant has been found competent to waive counsel, the court still has discretion to deny the request for self-representation if the court finds that defendant's request is not made knowingly.

During the *Faretta* colloquy, Defendant advised the Court on separate occasions and regarding several points that he understood but disagreed with some parts of the Court's advisement. These largely centered on the limits he would have in conducting his investigation and defense while in custody. Because it did not appear that Defendant adequately understood the limits he would be placing upon himself and his ability to adequately mount a defense, this Court cannot find that his request is "knowingly" made.

Based upon the totality of the circumstances,

IT IS ORDERED denying Defendant's request for self-representation.

Not to invite further litigation, but because it is the law, this Court's ruling is without prejudice.

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Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.